

REMARKS

The Examiner has rejected Claim 28 under 35 U.S.C. 101 as being directed to non-statutory subject matter. More specifically, the Examiner has stated that “[a] system’ comprising a network analyzer (i.e., software) does not include any functional structure of a system (i.e. an apparatus)” and “is considered [a] program per se, which is not one of the categories of statutory subject matter.” Additionally, the Examiner has stated that “[a]ccording to page 1, lines 13-14 of the specification, ‘a network analyzer’ is a program (i.e., software)” and “[a] system’ as claimed in claim 28 appears to be directed to a machine (i.e. system) not processes of a method.” The Examiner has further stated that “[t]herefore, [claim 28] is lacking the necessary structural/mechanical element to be a system (i.e. hardware) as [the] claim appears to be directed solely to software processes (i.e., network analyzer).”

Applicant respectfully disagrees and notes that applicant specifically claims a “computer-implemented system for capturing and selectively analyzing data frames transmitted between stations in a communications network utilizing tunneling protocols” (emphasis added), as claimed by applicant.

In the Office Action mailed 11/24/2008, the Examiner has argued that “the phrase ‘computer-implemented system’ does not inherently [mean] that the claim is directed to a machine” and that “[a] computer-implemented system’ needs to include at least one of the claimed elements of a system to be a hardware element (e.g., a processor) can the system as claimed to be a machine (i.e., one of the categories of statutory subject matter).”

Applicant respectfully disagrees. “A claimed process is surely patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing,” where the transformed articles may include “physical objects or substances” or articles “representative of physical objects or substances.” *In re Bilski*, 545 F.3d 943, 954 & 963 (Fed. Cir. 2008)

In the present case, applicant claims “receiving, in real-time, data frames transmitted in the communications network, the data frames being communicated utilizing tunneling,” “that the data frames that are communicated utilizing the tunneling are analyzed” and that “multiple objects generated by a plurality of protocol interpreters are linked” (as amended – emphasis added), as claimed, which is a “transformation” and is clearly statutory. By virtue of the claimed “receiving,” “analyz[ing],” “link[ing],” and “generat[ing],” as claimed, applicant clearly teaches and claims a “transformation” of a physical object or substance, or an article representative of a physical object or substance, to a different state or thing.

For these and various other reasons, applicant respectfully contends that the claim at issue is clearly statutory and meets the requirements of 35 U.S.C. 101.

Further, the Examiner has rejected Claim 29 under 35 U.S.C. 101 as being directed to non-statutory subject matter. More specifically, the Examiner has stated that “[a] graphical user interface’ comprising a user interface (i.e., software) does not include any functional structure of a machine (i.e., an apparatus)” and “is considered as [a] program per se, which is not one of the categories of statutory subject matter.” Additionally, the Examiner has stated that “[a]ccording [to] figure 5 of the specification, ‘graphical user interface’ is a program (i.e., software)” and that “[a] graphical user interface’ as claimed in claim 29 appears to be directed to a machine (i.e., system) not processes of a method.” The Examiner has further stated that “[t]herefore, [claim 29] is lacking the necessary structural/mechanical element to be a machine (i.e. hardware) as [the] claim appears to be directed... solely to [a] software program.”

Applicant respectfully disagrees. As noted above, “[a] claimed process is surely patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing,” where the transformed articles may include “physical objects or substances” or articles “representative of physical objects or substances.” *In re Bilski*, 545 F.3d 943, 954 & 963 (Fed. Cir. 2008)

In the present case, applicant claims “a user interface for receiving input from a user; enabling a tunnel analysis based on the user input,” “analyzing data frames that are communicated utilizing tunneling,” “that the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on the user input,” and “that multiple objects generated by a plurality of protocol interpreters are linked” (as amended – emphasis added), as claimed, which is a “transformation” and is clearly statutory. By virtue of the claimed “receiving,” “enabling,” “analyzing,” “link[ing],” and “generat[ing],” as claimed, applicant clearly teaches and claims a “transformation” of a physical object or substance, or an article representative of a physical object or substance, to a different state or thing.

For these and various other reasons, applicant respectfully contends that the claim at issue is clearly statutory and meets the requirements of 35 U.S.C. 101.

The Examiner has rejected Claim 29 under 35 U.S.C. 102(e) as being unpatentable over Pathak et al. (U.S. Patent Publication No. 2003/0014128). Additionally, the Examiner has rejected Claims 1-2, 4, 14-15, 17, and 28 under 35 U.S.C. 103(a) as being unpatentable over Sirbu (U.S. Patent No. 7,062,680), in view of Hippelainen (U.S. Patent Publication No. 2002/0078384), and further in view of Pathak. In addition, the Examiner has rejected Claim 32 under 35 U.S.C. 103(a) as being unpatentable over Sirbu, in view of Hippelainen, in view of Pathak, in view of Applicant Admitted Prior Art (AAPA), and further in view of Poisson et al. (U.S. Patent Publication No. 2004/0199624). Applicant respectfully disagrees with such rejections, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of dependent Claim 32.

With respect to independent Claim 29, the Examiner has relied on Paragraphs [0019] and [0022] from the Pathak reference to make a prior art showing of applicant’s claimed “enabling a tunnel analysis based on the user input.”

Applicant disagrees and respectfully points out that the above reference excerpts from Pathak relied on by the Examiner merely teach that “[u]pon receiving the data packets, the core... analyzes the data packets and captures certain data from the data packets” (Pathak - Paragraph [0019]). In addition, the reference excerpts from Pathak teach that “the user provides constraints which specify capture of information from particular data packets satisfying the provided constraints, as well as the measures, levels of granularity, and constraints associated therewith” (Pathak - Paragraph [0022]).

However, merely teaching that a core analyzes data packets, and that a user provides constraints which specify capture of information from particular data packets, as in Pathak, does not teach “enabling a tunnel analysis based on the user input” (emphasis added), as claimed by applicant.

In the Office Action mailed 12/21/2007, the Examiner has argued that “Pathak further teach[es] by specifying the constraint, it enables capture of information from particular data packet[s] satisfying the specified constraints ([0022])” and that “[t]his means capture of information, which is part of the analyzing of the GPRS tunneling packets is made possible based on the user specified constraints (i.e., enabling the tunnel analysis based on user input).”

Applicant respectfully disagrees and again notes that merely “provid[ing] constraints which specify capture of information from particular data packets satisfying the provided constraints” (emphasis added), as in Pathak, does not teach “enabling a tunnel analysis,” much less “enabling a tunnel analysis based on the user input” (emphasis added), as specifically claimed by applicant.

In the Office Action mailed 11/24/2008, the Examiner has simply stated that “applicant’s arguments have been fully considered and addressed... in the Final Office Action mailed 12/21/2007” and has failed to specifically respond to applicant’s above arguments. Again, applicant respectfully asserts that providing constraints which specify

capture of information from particular data packets satisfying the provided constraints, as in Pathak, simply fails to even suggest “enabling a tunnel analysis,” much less “enabling a tunnel analysis based on the user input” (emphasis added), as specifically claimed by applicant. Thus, applicant respectfully requests a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features.

Also with respect to independent Claim 29, the Examiner has relied on Paragraphs [0020] and [0021] in Pathak to make a prior art showing of applicant’s claimed technique “wherein the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on the user input.”

Applicant respectfully asserts that such excerpts simply disclose “preprocess[ing] the raw data captured at the core” (Paragraph [0020]) and that “the user can provide constraints which specify capture of information from particular data packets satisfying the provided constraints” (Paragraph [0021]). Clearly, simply preprocessing raw data which is captured from data packets matching user provided constraints, as in Pathak, fails to meet applicant’s claimed technique “wherein the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on the user input” (emphasis added), as claimed.

In the Office Action mailed 12/21/2007, the Examiner has simply repeated the arguments noted above, namely that “Pathak teaches packets such as GPRS tunneling protocol packet data ([0017]) are analyze[d] and capture[d] based on user inputted constraint[s] ([0021] and [0022])” and that “[t]his means that analyze and capture are imposed, depending on specified constraints (i.e., conditionally performed).” Applicant respectfully disagrees and asserts that simply disclosing that “the user provides constraints which specify capture of information from particular data packets satisfying the provided constraints” (Paragraph [0022], and substantially the same language in Paragraph [0021] - emphasis added), in addition to merely mentioning GPRS tunneling protocol packet data (Paragraph [0017]), fails to meet applicant’s claimed technique

“wherein the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on the user input” (emphasis added), as claimed.

In the Office Action mailed 11/24/2008, the Examiner has simply stated that “applicant’s arguments have been fully considered and addressed... in the Final Office Action mailed 12/21/2007” and has failed to specifically respond to applicant’s above arguments.

Furthermore, applicant respectfully asserts that Paragraph [0020] from Pathak merely discloses that “[t]he repository 210 is a database which stores and preprocesses the raw data captured at the core 205” and that “[t]he performance measurement terminal 215 can include a computer system with an appropriate graphical user interface which assists a user in requesting certain data from the repository 210 and displaying the data from the repository 210” (emphasis added).

However, disclosing a graphical user interface that assists a user in requesting certain data from the repository, where the repository is a database that stores and preprocesses the raw data, as in Pathak, simply fails even suggest that “the analyzing is conditionally performed for one or more types of tunnels” (emphasis added), let alone applicant’s claimed technique “wherein the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on the user input” (emphasis added), as claimed.

Thus, applicant respectfully requests a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features.

Additionally, with respect to independent Claims 1, 14 and 28, the Examiner has relied on Paragraphs [0021] and [0022] from the Pathak reference to make a prior art showing of applicant’s claimed technique “wherein the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on user

input” (see this or similar, but not necessarily identical language in the aforementioned independent claims).

Applicant respectfully asserts that the excerpts from Pathak relied upon by the Examiner merely teach that “the user provides constraints which specify capture of information from particular data packets satisfying the provided constraints” (Paragraph [0022], and substantially the same language in Paragraph [0021] - emphasis added). However, merely teaching that the user can provide constraints which specify capture of information from particular data packets, fails to even *suggest* that “the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on user input” (emphasis added), as claimed by applicant.

In the Office Action mailed 12/21/2007, the Examiner has again argued that “Pathak teaches packets such as GPRS tunneling protocol packet data ([0017]) are analyze[d] and capture[d] based on user inputted constraint[s] ([0021] and [0022])” and that “[t]his means that analyze and capture are imposed, depending on specified constraints (i.e., conditionally performed).”

Applicant respectfully disagrees and notes that the additional excerpts relied on by the Examiner merely teach that “wireless content switch 108 can receive GPRS tunneling protocol packet data from serving node 106, and can process the GPRS tunneling protocol packet data to performance additional functionality prior to transmitting the packet data to gateway node 110” (Paragraph [0017] – emphasis added). However, merely disclosing receiving and processing GPRS tunneling protocol packet data, in addition to disclosing that the user can provide constraints which specify capture of information from particular data packets (as noted above), fails to even *suggest* that “the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on user input” (emphasis added), as claimed by applicant.

In the Office Action mailed 11/24/2008, the Examiner has simply stated that “applicant’s arguments have been fully considered and addressed... in the Final Office

Action mailed 12/21/2007” and has failed to specifically respond to applicant’s above arguments. Again, applicant respectfully asserts that receiving and processing GPRS tunneling protocol packet data, in addition to a user providing constraints which specify capture of information from particular data packets, as in Pathak, simply fails to even *suggest* that “the analyzing is conditionally performed for one or more types of tunnels associated with the tunneling based on user input” (emphasis added), as claimed by applicant. Thus, applicant respectfully requests a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features.

With respect to the rejection under 35 U.S.C. 102(e), the Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Pathak reference excerpt(s), as noted above.

With respect to the rejection under 35 U.S.C. 103(a), the Examiner is reminded that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has substantially incorporated the subject matter of Claim 32 et al. into each of the independent claims.

With respect to the subject matter of former Claim 32 (now at least substantially incorporated into each of the independent claims), the Examiner has relied on Paragraph [0059] (excerpted below) from the Poisson reference to make a prior art showing of applicant's claimed technique "wherein multiple objects generated by a plurality of protocol interpreters are linked to logically portray a relationship between endpoints of a tunnel and stations conversing inside the tunnel" (see this or similar, but not necessarily identical language in the independent claims).

"Referring to FIG. 21, the switch manager GUI eases administration of a virtual private network extranet switches by collecting information about the entire network in a single display. As shown, the switch manager GUI displays configuration information imported from one or more extranet switches (e.g., via the import mechanism described in conjunction with FIG. 15). The GUI uses a split screen display that includes a navigation pane 200 listing different virtual private network switches 202, subscribers 204, and other information such as periodic scheduling 206 of management functions and scripts 208 that can perform these functions. As shown, the listing uses a hierarchical tree to display the virtual private network elements (e.g., an extranet switch). Each element can be the parent of one more sub-elements. An administrator can view a listed element in more detail by expanding the tree (e.g., clicking on the '-' or '+' next to an element). The tree display enables an administrator to quickly find, add, remove, and configure different virtual private network extranet switches." (Paragraph [0059] - emphasis added)

Applicant respectfully asserts that the excerpt from Poisson relied upon by the Examiner merely teaches that "the switch manager GUI displays configuration

information imported from one or more extranet switches” and that “the listing uses a hierarchical tree to... display the virtual private network elements” (emphasis added).

However, simply displaying configuration information, in addition to using a hierarchical tree to display virtual private network elements, as in Poisson, simply fails to teach or suggest applicant’s claimed technique “wherein multiple objects generated by a plurality of protocol interpreters are linked to logically portray a relationship between endpoints of a tunnel and stations conversing inside the tunnel” (emphasis added), as claimed by applicant. Clearly, using a hierarchical tree to display virtual private network elements, as in Poisson, simply fails to even suggest any sort of “relationship between endpoints of a tunnel and stations conversing inside the tunnel” (emphasis added), as specifically claimed by applicant.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to dependent Claim 12 et al., as rejected under 35 U.S.C. 103(a) as being unpatentable over Sirbu, Hippelainen, Pathak, and Applicant Admitted Prior Art (AAPA), the Examiner has argued that Page 3, second paragraph, item 15 in Figure 1A, and Table 3 of AAPA meet applicant’s claimed technique “wherein the IP protocol interpreter is re-executed to accommodate the tunneling.”

Applicant respectfully asserts that Page 3, second paragraph and table 3 of applicant’s specification only discloses an “order in which...EPIs are called.” Further, item 15 in Figure 1A only shows a frame resulting from an analysis (see Page 3, paragraph 1 of the specification). Clearly, only mentioning that EPIs are called based on

an order fails to specifically teach that an “IP protocol interpreter is re-executed to accommodate the tunneling” (emphasis added), as claimed.

In the Office Action mailed 12/21/2007, the Examiner has argued that “AAPA teaches calling (i.e., executing) the EPIs (i.e., IP protocol interpreters) in the order shown in Table 3 (page 3, 2nd paragraph of the specification)” and that “[a]ccording to Table 3, EPIs are called for in the order of ETHER (first), IP (2nd), TCP (3rd), etc.” Additionally, the Examiner has argued that “[t]his means the EPIs are called to analyze ETHER, and called again [to] analyze IP and so on according to the order of Table 3 (i.e., IP protocol interpreters are re-executed for analysis).”

Applicant respectfully disagrees and again notes that Table 3 of AAPA merely discloses an “order in which...EPIs are called.” However, merely mentioning that EPIs are called based on an order fails to specifically teach that an “IP protocol interpreter is re-executed to accommodate the tunneling” (emphasis added), as claimed.

In the Office Action mailed 11/24/2008, the Examiner has simply stated that “applicant’s arguments have been fully considered and addressed... in the Final Office Action mailed 12/21/2007” and has failed to specifically respond to applicant’s above arguments. Again, applicant respectfully asserts that merely mentioning that EPIs are called based on an order, as in AAPA, fails to specifically teach that an “IP protocol interpreter is re-executed to accommodate the tunneling” (emphasis added), as claimed. Thus, applicant respectfully requests a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features.

Yet again, at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or a proper prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 34-35 below, which are added for full consideration:

“wherein byte counts distinguish between the stations conversing inside the tunnel and the endpoints of the tunnel” (see Claim 34); and

“wherein the IP protocol interpreter is re-executed in a recursive manner” (see Claim 35).

Again, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAIIP306).

Respectfully submitted,
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